

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
MARION E. AND IRENE DAYTON)

For Appellants: Marion E. Dayton
in pro. per.

For Respondent: Crawford H. Thomas
Chief Counsel

Marvin J. Halpern
Counsel

O P I N I O N

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Marion E. and Irene Dayton for refund of personal income tax in the amounts of \$138.13, \$267.67, \$560.59, and \$426.62 for the years 1966, 1967, 1968, and 1969, respectively.

The question presented is whether appellant Marion E. Dayton, a ship captain, was a California resident during the years 1966-1969, inclusive, thereby rendering his entire income taxable.

Appellant lived in California at least two years before beginning his career as a ship captain. During the yearson appeal he was a member of the Masters, Mates, and

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Pilots Union, paying dues to the San Francisco office at that union. All of his voyages in this period began and ended in San Francisco.

Appellant owned a home in Fountain Valley, Orange County, California, where he lived with his wife and children when he was not at sea. Appellant was in California for about 102 days in 1966, 95 days in 1967, 108 days in 1968, and 114 days in 1969. His personal effects and records which he did not take on his voyages were kept at the Fountain Valley home.

Appellant was registered to vote in California and did vote here in 1968. He owned a car which was registered in California, and his only driver's license was issued by this state. With his wife he maintained joint checking and savings accounts here. He did not own any property outside of California, and he did not have any connection with any other state.

In the years at issue, appellants filed joint California resident personal income tax returns. Subsequently, appellants filed amended separate returns for these same years. In her return, Irene Dayton reported one-half of appellant's income as a ship captain. In his nonresident returns, appellant did not show any of his earnings as a captain. Respondent regarded the amended returns as claims for refunds, and the subsequent disallowance thereof resulted in this appeal.

Respondent contends that appellant was a resident of California during the years in question because he was domiciled in California and was absent from the state for only temporary or transitory purposes. (Rev. & Tax. Code, § 17014, subd. (b).) Appellant does not deny that he was domiciled in California, nor could he successfully do so. (Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971; Appeal of Arthur and Frances E. Horrigan, Cal. St. Bd. of Equal., July 6, 1971; Appeal of Walter W. and Ida J. Jaffee, formerly Ida J. Reichenbach, Cal. St. Bd. of Equal., July 6, 1971.) Appellant does, however, contend that his absences from the state were not temporary or transitory, and that he therefore is not a resident of California for income tax purposes.

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The term "temporary or transitory purpose" is discussed in California Administrative Code, title 18, regulation 17014-17016(b), as follows:

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent on the facts and circumstances of each particular case. It can be stated generally, however, that if an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

Although this regulation is framed in terms of presence in California, the same examples may be considered in determining the nature of a domiciliary's purpose when he is absent from the state. (Appeal of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968; Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., Mar. 25, 1968,)

Appellant's absences were occasioned by his acceptance of particular contracts or engagements to perform services as a ship captain on a voyage by voyage basis. Absence to perform a particular contract or engagement is one of the chosen exemplars of temporary or transitory purpose. This board has held that the absence of a seaman for the purpose of performing obligations of his employment contracts was of a temporary or transitory nature on facts very similar to the facts in this case. (Appeal of Bernard and Helen Fernandez, supra; Appeal of Arthur and Frances E. Horrigan, supra; Appeal of Walter W. and Ida J. Jaffee, formerly Ida J. Reichenbach, supra.) Even where an absence for purposes of employment is for an extended period it may still be temporary or transitory. (Appeal of Earl F. and Helen W. Brucker, Cal. St. Bd. of Equal., July 18, 1961; Appeal of Brent L. Berry, Cal. St. Bd. of Equal., Mar. 22, 1971.)

Appellant's reliance upon the Appeal of W. J. Sasser, Cal. St. Bd. of Equal., Nov. 5, 1963, is not well placed. The issue in Sasser was identical to the issue in

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this case, but the facts are readily distinguishable. Although he was a domiciliary of California, Sasser was unmarried, did not maintain a California residence, owned property in another state but none in California, and in general had very minor contact with California. The board noted that Sasser's entire life style was characterized by an air of impermanence. Based on these facts, the board concluded that his absences were for other than temporary or transitory purposes, hence he was not a resident for tax purposes.

In view of all the foregoing, we conclude that Marion E. Dayton was a California resident for income tax purposes during the years 1966-1969 inclusive thereby rendering his entire taxable income for these years subject to tax.

O R D E R

Fursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing theref or,

IT IS HEREBY ORDERED, ADJUDGED AND DECReED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Marion E. and Irene Dayton for refund of personal income tax in the amounts of \$138.13, \$267.67, \$560.59, and \$462.62 for the years 1966, 1967, 1968, and 1969, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of February, 1973, by the State Board of Equalization.

William L. Bennett Chairman
John W. Lynch, Member
John K. Reed, Member
_____, Member
_____, Member

ATTEST.: W. W. Jemlepp, Secretary